

الْبَابُ السَّادِسُ

الْعَدْلُ مَعَهُمْ فِي الْحُكْمِ وَالْقَضَاءِ

CHAPTER SIX

JUSTICE IN ALL JUDGMENTS AND
RULINGS FOR NON-MUSLIMS

١. ﴿فَمَنْ أَعْتَدَنِي عَلَيْكُمْ فَأَعْتَدُنَا عَلَيْهِ بِمِثْلِ مَا أَعْتَدَنِي عَلَيْكُمْ وَأَنْقُوا اللَّهَ وَأَعْلَمُوا أَنَّ اللَّهَ مَعَ الْمُتَّقِينَ﴾

١. *¶So if someone wrongs you, you may also respond in kind but proportional to his offence. And fear Allah. And remember that Allah is with those who fear Him.¶¹*

٢. ﴿يَا أَيُّهَا الَّذِينَ آمَنُوا كُونُوا قَوَّمِينَ لِلَّهِ شُهَدَاءَ إِنَّ الْقِسْطَ لَا يَجْرِي مِنْكُمْ شَيْءٌ قَوْمٌ عَلَىٰ أَلَا تَعْدِلُوا أَعْدِلُوا هُوَ أَقْرَبُ لِلتَّقْوَىٰ وَأَنْقُوا اللَّهَ إِنَّ اللَّهَ خَيْرٌ بِمَا تَعْمَلُونَ﴾

٢. *¶O believers! Holding fast to the cause of Allah, bear witness based on justice. And let not (even) the extreme hostility against a people provoke you into abstaining from justice (in their case). Always do justice, (for) it is closer to piousness. And fear Allah. Indeed, Allah is Well Aware of your works.¶²*

٣. ﴿وَلَا تَكُسِبُ كُلُّ نَفْسٍ إِلَّا عَلَيْهَا وَلَا تَزِرُ وَازْرَةٌ وِزْرَ أُخْرَىٰ﴾

٣. *¶And whatever (sin) each soul earns, (its evil outcome) falls back upon it. And no bearer of burden will bear another's burden.¶³*

٤. ﴿لَقَدْ أَرْسَلْنَا رُسُلَنَا بِالْبَيِّنَاتِ وَأَنْزَلْنَا مَعَهُمُ الْكِتَابَ وَالْمِيزَانَ لِيَقُومَ

¹ Qur'ān 2:194.

² Ibid., 5:8.

³ Ibid., 6:164.

الثَّالِثُ بِالْقِسْطِ

4. «Verily, We sent Our Messengers with clear signs, and We sent down with them the Book and the balance of justice so that people might grow firm and stable in justice.»¹

5. «لَا يَنْهَاكُمُ اللَّهُ عَنِ الَّذِينَ لَمْ يُقْتَلُوكُمْ فِي الدِّينِ وَلَمْ يُخْرِجُوكُمْ مِّنْ دِيْرِكُمْ أَنْ تَبَرُّهُمْ وَتُقْسِطُوا إِلَيْهِمْ إِنَّ اللَّهَ يُحِبُّ الْمُقْسِطِينَ»

5. «Allah does not forbid you to be good to them and treat them with equity and justice who did not fight against you on (the question of) Dīn (Religion), nor did they drive you out of your homes (i.e., homeland). Surely, Allah likes those who conduct themselves with equity and justice.»²

HADITH

١/٦٠. عَنْ عَبْدِ الرَّحْمَنِ بْنِ الْبَيْلَمَانِيِّ، أَنَّ رَجُلًا مِّنَ الْمُسْلِمِينَ قَتَلَ رَجُلًا مِّنْ أَهْلِ الْكِتَابِ، فَرُفِعَ إِلَى النَّبِيِّ ﷺ، فَقَالَ رَسُولُ اللَّهِ ﷺ: أَنَا أَحَقُّ مَنْ وَقَى بِذَمَّتِهِ، لَمْ أَمْرَ بِهِ فَقُتِلَ.

رَوَاهُ الشَّافِعِيُّ وَالْبَهْقِيُّ وَالشَّيْبَانِيُّ وَالْقَرَشِيُّ.

٦٠/١. According to 'Abd al-Rahmān b. Baylamānī ﷺ:

“There was a man from the Muslims who killed a non-Muslim with whom there was a peace treaty. The case was presented to the Prophet ﷺ and he said: ‘I am the most responsible of all for fulfilling the rights of those under my care [non-Muslim citizens].’ Then he

¹ Ibid., 57:25.

² Ibid., 60:8.

ordered [the killing of the Muslim killer by way of retribution] and he was executed.”¹

Reported by al-Shāfi‘ī, al-Bayhaqī, al-Shaybānī and al-Qurashī.

٢/٦١ . وَفِي رِوَايَةِ عَنْهُ، قَالَ: إِنَّ رَجُلًا مِنْ أَهْلِ الدِّرْمَةِ أَتَى رَسُولَ اللَّهِ ﷺ فَقَالَ: إِنَّا عَاهَدْنَاكَ وَبِإِعْنَاكَ عَلَى كَذَّا وَكَذَّا وَقَدْ خَتَرَ بِرَجُلٍ مِنَّا، فَقُتِلَ . فَقَالَ: أَنَا أَحَقُّ مَنْ أُوقَى بِذِمَّتِهِ . فَأَمَّا كُنْهُ مِنْهُ فَضُرِبَتْ عُنْقُهُ .

رَوَاهُ الْبَيْهَقِيُّ وَالْدَّارَقُطْنَيُّ وَالشَّافِعِيُّ .

61/2. In a similar report, ‘Abd al-Rahmān b. Baylamānī related:

“A man from among the non-Muslim citizens came to Allah’s Messenger ﷺ and said: ‘We have entered into a treaty with you on such and such issue. One of us was betrayed and murdered.’ Allah’s Messenger ﷺ said: ‘I am most responsible of all for fulfilling the rights of those under my care [non-Muslim citizens].’ Then he ordered [the killing of the Muslim killer by way of retribution] and he was killed.”²

Reported by al-Bayhaqī, al-Dāraqutnī and al-Shāfi‘ī.

٣/٦٢ . عَنْ أَبِي شَرِيعِ الْخَزَاعِيِّ أَنَّ النَّبِيَّ ﷺ قَالَ: مَنْ أُصِيبَ بِقَتْلٍ أَوْ خَبْلٍ، فَإِنَّهُ يُخْتَارُ إِحْدَى ثَلَاثَةِ: إِمَّا أَنْ يَقْتَصَّ، وَإِمَّا أَنْ يَعْفُوَ، وَإِمَّا أَنْ يَأْخُذَ الدِّيَةَ . فَإِنْ أَرَادَ الرَّابِعَةَ فَخُلُّدُوا عَلَى يَدِهِ (فَمَنْ أَعْتَدَى بَعْدَ ذَلِكَ فَلَهُ وَعْدَ الْيَمِّ) .

رَوَاهُ أَبُو دَاوُدَ وَعَبْدُ الرَّزَاقِ .

62/3. Abū Shurayh al-Khuza‘ī related that the Prophet ﷺ said:

¹ Set forth by •al-Shāfi‘ī in *al-Musnad*, p. 343 and in *al-Umm*, 7:320. •Abū Nu‘aym in *Musnad Abī Ḥanīfa*, p. 104. •al-Bayhaqī in *al-Sunan al-kubrā*, 8:30 §15696. •al-Shaybānī in *al-Mabsūt*, 4:488 and in *al-Ujja*, 4:342-344. •al-Qurashī in *al-Kharāj*, p. 82 §238.

² Set forth by •al-Bayhaqī in *al-Sunan al-kubrā*, 8:30 §15697 and in *Ma‘rifa al-sunan wa al-āthār*, 6:149 §4814. •al-Daraquṭnī in *al-Sunan*, 3:135 §167. •al-Shāfi‘ī in *al-Musnad*, 1:443.

“If someone’s relative is killed, or if one of his extremities is cut off, he may choose one of the three options: he may retaliate, forgive or receive compensation. But if he wishes a fourth [something that exceeds the bounds set by the Shariah], you must hold him back [for Allah says,] *«So, anyone who transgresses after that, there is painful torment for him»*¹ .”²

Reported by Abū Dāwūd and ‘Abd al-Razzāq.

٤٦٣ . عَنْ عَلَيٍّ بْنِ أَبِي طَالِبٍ عليه السلام، إِذَا قَتَلَ الْمُسْلِمُ النَّصَارَىَ قُتِلَ بِهِ.
رَوَاهُ الشَّيْبَانِيُّ وَالشَّافِعِيُّ .

63/4. ‘Alī b. Abī Tālib رض said:

“If a Muslim kills a Christian, he shall be killed in retribution.”³

Reported by al-Shaybānī and al-Shāfi‘ī.

٤٦٤ . عَنْ مُجَاهِدٍ، عَنْ أَبْنِ مَسْعُودٍ عليه السلام، قَالَ: كَانَ يَقُولُ: دِيَةُ أَهْلِ الْكِتَابِ مِثْلُ دِيَةِ الْمُسْلِمِ .
رَوَاهُ أَبْنُ أَبِي شَيْبَةَ .

64/5. According to Mujāhid, Ibn Mas‘ūd رض said:

“The blood money for the people of the Book is equal to that of Muslims.”⁴

Reported by Ibn Abī Shayba.

¹ Qur‘ān 2:178.

² Set forth by •Abū Dāwūd in *al-Sunan: Kitāb al-diyāt* [The Book of Blood Money], chapter: “The Leader Should Urge Forgiveness in the Matter of Shedding Blood,” 4:169 §4496. •‘Abd al-Razzāq in *al-Muṣannaf*, 10:86 §18454.

³ Cited by •al-Shāfi‘ī in *al-Umm*, 7:320. •al-Shaybānī in *Kitāb al-hujja ‘alā ahl al-Madīna*, 4:347.

⁴ Set forth by •Ibn Abī Shayba in *al-Muṣannaf*, 5:406 §27444.

٦/٦٥ . عَنْ الْقَاسِمِ بْنِ عَبْدِ الرَّحْمَنِ، قَالَ: قَالَ عَبْدُ اللَّهِ: مَنْ كَانَ لَهُ عَهْدٌ، أَوْ ذِمَّةٌ فَدِيَتُهُ دِيَّةُ الْحُرُّ الْمُسْلِمِ .
رَوَاهُ ابْنُ أَبِي شَيْبَةَ .

65/6. Al-Qāsim b. ‘Abd al-Rahmān related that ‘Abd Allah b. Mas‘ūd said:

“The blood money of a non-Muslim who is under treaty (of protection of life and property) or is under guarantee is equal to that of a free Muslim.”¹

Reported by Ibn Abī Shayba.

• عَنْ إِبْرَاهِيمَ، عَنْ عَلْقَمَةَ، قَالَ: دِيَّةُ الْمُعَاهِدِ مِثْلُ دِيَّةِ الْمُسْلِمِ .
رَوَاهُ ابْنُ أَبِي شَيْبَةَ .

Ibrāhīm related that ‘Alqama said: “The blood money of a person under peace treaty [*mu‘āhad*] is equal to that of a Muslim.”²

Reported by Ibn Abī Shayba.

• عَنْ أَبِي حَيْنَةَ عَنِ الْحَكَمِ بْنِ عُتْبَيَةَ أَنَّ عَلِيًّا رَضِيَ اللَّهُ عَنْهُ قَالَ: دِيَّةُ الْيَهُودِيِّ وَالنَّصَارَى وَكُلُّ ذِمَّيٍّ مِثْلُ دِيَّةِ الْمُسْلِمِ . قَالَ أَبُو حَيْنَةَ وَهُوَ قَوْلِي .
رَوَاهُ عَبْدُ الرَّزَاقِ .

Imam Abū anīfa reported on the authority of ‘Utba that ‘Alī b. Abī Ṭālib رضي الله عنه said: “The blood money for a [peaceful] Jew, Christian and every non-Muslim citizen is like that of the Muslim [i.e., their heirs receive the same amount of monetary compensation as a Muslim family does].” Imam

¹ Ibid., §27445.

² Ibid., §27446.

Abū anīfa said: “I support this statement.”¹

Reported by 'Abd al-Razzāq.

• قَالَ بَعْضُ أَهْلِ الْعِلْمِ: دِيَةُ الْيَهُودِيِّ وَالنَّصَارَانِيِّ مِثْلُ دِيَةِ الْمُسْلِمِ وَهُوَ قَوْلُ سُفْيَانَ الشَّوَّرِيِّ وَأَهْلِ الْكُوفَةِ.
رَوَاهُ التَّرْمِذِيُّ.

Some jurists said: “The blood money for a [peaceful] Jew or a Christian is like that of a Muslim. This is the position of Sufyān al-Thawrī and the people of Kufa.”²

Reported by al-Tirmidhī.

• عَنِ الزُّهْرِيِّ قَالَ: دِيَةُ الْيَهُودِيِّ وَالنَّصَارَانِيِّ وَالْمَجُوسِيِّ وَكُلُّ ذَمَّيِّ مِثْلُ دِيَةِ الْمُسْلِمِ.
رَوَاهُ عَبْدُ الرَّزَّاقِ.

According to al-Zuhrī: “The blood money for a [peaceful] Jew, a Christian or a Zoroastrian and every non-Muslim citizen is like that of a Muslim [i.e., their heirs receive the same amount of monetary compensation as a Muslim family].”³

Reported by 'Abd al-Razzāq.

• قَالَ ابْنُ شِهَابٍ الزُّهْرِيُّ: إِنَّ دِيَةَ الْمُعَااهِدِ فِي عَهْدِ أَبِي بَكْرٍ وَعُمَرَ وَعُثْمَانَ بْنِ عَلِيٍّ مِثْلُ دِيَةِ الْحُرُّ الْمُسْلِمِ.

¹ Set forth by •'Abd al-Razzāq in *al-Muṣannaf*, 10:97 §18494.

² Set forth by •al-Tirmidhī in *al-Sunan: Kitāb al-diyāt* [The Book of Blood Money], chapter: “What Has Come To Us Concerning The Blood Money Of Non-Muslims,” 4:25 §1413.

³ Set forth by •'Abd al-Razzāq in *al-Muṣannaf*, 10:95 §18491.

ذَكْرُهُ الشَّيْبَانِيُّ وَالشَّافِعِيُّ.

Imam Ibn Shihāb al-Zuhrī said: ‘During the reigns of Abū Bakr, ‘Umar and ‘Uthmān ﷺ, the blood money for a non-Muslim citizen was equal to that of a free Muslim.’¹

Cited by al-Shaybānī and al-Shāfi‘ī.

The position of the Ḥanafī school of jurisprudence is that a Muslim should be killed in retribution for killing a non-Muslim citizen. This position is supported by the general import of the texts within the Qur’ān and hadith, which make retribution obligatory. Muslim and non-Muslim blood share an equal amount of inviolability and sanctity, without any discrimination. Imam al-Nakha‘ī, Ibn Abī Laylā, al-Sha‘bī and ‘Uthmān al-Battī also share this view held by the Ḥanafī school.

A doubt may emerge pertaining to the saying of the Prophet ﷺ,

وَلَا يُقْتَلُ مُسْلِمٌ بِكَافِرٍ.

“A Muslim is not to be killed in retaliation for murdering a disbeliever.”²

What does that mean? The jurists explained this and said that here the word “disbeliever” does not refer to a peaceful citizen; it rather signifies a combatant who is killed. There is to be no retribution in this case. This is an international law in effect in all countries of the world and there is no difference of opinion about it.

٧/٦٦. عَنْ إِبْرَاهِيمَ أَنَّ رَجُلًا مِنْ بَنِي بَكْرٍ بْنِ وَائِلٍ قُتِلَ رَجُلًا مِنْ أَهْلِ الْحِيرَةِ، فَكَتَبَ فِيهِ عُمُرُ بْنُ الْخَطَّابِ رَضِيَ اللَّهُ عَنْهُ أَنْ يَدْفَعَ إِلَى أَوْلِيَاءِ الْمَقْتُولِ. فَإِنْ شَاءُوا قَتَلُوا وَإِنْ شَاءُوا عَفَوْا. فَدَفَعَ الرَّجُلُ إِلَى وَلِيِّ الْمَقْتُولِ إِلَى رَجُلٍ يُقَالُ لَهُ حُنَيْنٌ مِنْ أَهْلِ الْحِيرَةِ، فَقَتَلَهُ.

¹ Cited by •al-Shāfi‘ī in *al-Umm*, 7:321. •al-Shaybānī in *al-Hujja*, 4:351.

² Set forth by •al-Bukhārī in *al-Saḥīḥ: Kitāb al-‘ilm* [The Book of Knowledge], chapter: “On Writing Down Knowledge,” 1:53 §111.

رَوَاهُ الشَّافِعِيُّ وَالْبَيْهَقِيُّ.

66/7. Ibrāhīm related: “During the Caliphate of ‘Umar ﷺ, a person from the tribe of Banū Bakr b. Wā'il killed a non-Muslim citizen of Hira. On this, ‘Umar b. al-Khaṭṭāb wrote the judgment to hand the killer over to the guardian of the victim, who had the choice of either killing or pardoning him. Hence, the killer was handed over to the guardian of the victim named unayn, who killed him.”¹

Reported by al-Shāfi‘ī and al-Bayhaqī.

٦٧/٨. عَنْ أَبِي الْجَنْوِبِ الْأَسْدِيِّ قَالَ: أَتَيَ عَلَيْيَ بْنُ أَبِي طَالِبٍ بْنَ جُلَيْلٍ مِنَ الْمُسْلِمِينَ قَتَلَ رَجُلًا مِنْ أَهْلِ الدِّرْمَةِ. قَالَ: فَقَامَتْ عَلَيْهِ الْبَيْنَةُ, فَأَمْرَ بِقَتْلِهِ, فَجَاءَ أَخُوهُ فَقَالَ: إِنِّي قَدْ عَفَوتُ عَنْهُ. قَالَ: فَلَعَلَّهُمْ هَدَدُوكُمْ أَوْ فَرَقُوكُمْ أَوْ فَزَعُوكُمْ. قَالَ: لَا, وَلَكِنَّ قَتْلَهُ لَا يُرُدُّ عَلَيَّ أَخِي, وَعَوَضُونِي قَرِضْيَتْ. قَالَ: أَنْتَ أَعْلَمُ. مَنْ كَانَ لَهُ ذَمَّتُنَا فَدَمْهُ كَدَمِنَا وَدِيَتُهُ كَدِيَتَنَا.

رَوَاهُ الشَّافِعِيُّ وَأَبْوَيُوسْفَ وَالْبَيْهَقِيُّ.

67/8. Abū Junūb al-Asadī related:

“A Muslim who had killed a non-Muslim citizen was presented in the court of ‘Alī ﷺ. The proof of his crime was found valid, and for that, ‘Alī ﷺ ordered him to be killed in retribution. The brother of the victim came to ‘Alī and said: ‘I have forgiven him.’ ‘Alī said: ‘Perhaps they [the heirs of the killer] scared you or threatened you.’ He replied in the negative and said: ‘My brother would not come back, even if the killer was killed in retribution, and they (the heirs of the killer) paid me the blood money; therefore, I am content.’ On this, ‘Alī said: ‘You know better (but this is the principle of our government). When someone comes under the guarantee of our protection, his blood

¹ Set forth by •al-Shāfi‘ī in *al-Umm*, 7:321. •al-Bayhaqī in *al-Sunan al-kubrā*, 8:32 §15706. •al-Shaybānī in *al-ujja*, 4:335. •al-Zayla‘ī in *Naṣb al-rāya*, 4:337.

becomes like our blood, and the blood money due to him is like the blood money due to us.”¹

Reported by Shāfi‘ī, Abū Yūsuf and al-Bayhaqī.

٩/٦٨ . وَفِي رِوَايَةِ عَنْ أَنَسِ أَنَّ رَجُلًا مِنْ أَهْلِ مِصْرَ أَتَى عُمَرَ بْنَ الْخَطَّابِ فَقَالَ: يَا أَمِيرَ الْمُؤْمِنِينَ، عَاهَدْتِ بِكَ مِنَ الظُّلْمِ. قَالَ: عَذْتَ مَعَاذًا. قَالَ: سَابَقْتُ ابْنَ عَمْرِو بْنِ الْعَاصِ، فَسَبَقْتُهُ، فَجَعَلَ يَضْرِبُنِي بِالسَّوْطِ وَيَقُولُ: أَنَا ابْنُ الْأَكْرَمِينَ. فَكَتَبَ عَمْرُ إِلَى عَمْرِو يَأْمُرُهُ بِالْقُدُومِ وَيَقْدُمُ بِأَنْتَهِ مَعَهُ، فَقَدِمَ، فَقَالَ عُمَرُ: أَيْنَ الْمَضْرِيُّ؟ خُذْ السَّوْطَ فَاضْرِبْ. فَجَعَلَ يَضْرِبُهُ بِالسَّوْطِ وَيَقُولُ عُمَرُ: اضْرِبْ ابْنَ الْأَكْرَمِينَ. قَالَ أَنَسُ: فَضَرَبَ، فَوَاللَّهِ، لَقِدْ ضَرَبَهُ وَنَحْنُ نُحِبُّ ضَرْبَهُ. فَمَا أَقْلَعَ عَنْهُ حَتَّى تَمَنَّيْنَا أَنَّهُ يَرْفَعَ عَنْهُ. ثُمَّ قَالَ عُمَرُ لِلْمَضْرِيِّ: ضَعِ السَّوْطَ عَلَى صُلْعَةِ عَمْرِو، فَقَالَ: يَا أَمِيرَ الْمُؤْمِنِينَ، إِنَّمَا ابْنُهُ الَّذِي ضَرَبَنِي وَقَدِ اسْتَقْدَمْتُ مِنْهُ. فَقَالَ عُمَرُ لِعَمْرِو: مُدْ كَمْ تَعَدَّدُتُمُ النَّاسَ وَقَدْ وَلَدْتُهُمْ أَمَّهَا تُهُمْ أَحْرَارًا؟ قَالَ: يَا أَمِيرَ الْمُؤْمِنِينَ، لَمْ أَعْلَمْ وَلَمْ يَأْتِنِي .

ذَكْرُهُ الْهِنْدِيُّ.

68/9. Anas b. Mālik ﷺ related:

“A person from Egypt came to ‘Umar b. al-Khaṭṭāb and said: ‘O Commander of the faithful! I beg your refuge from wrongdoing.’ He said: ‘You are granted total refuge.’ He said: ‘I had a race with the son of ‘Amr b. al-Āṣ and I beat him, then he whipped me, saying: ‘I am the son of the noble!’ ‘Umar wrote to ‘Amr b. al-Āṣ and ordered him to present his son in his court. ‘Amr b. al-Āṣ followed the command and submitted. ‘Umar called that Egyptian and said: ‘Take this whip and flog (the son of ‘Amr b. al-Āṣ).’ He was flogged while ‘Umar b. al-

¹ Set forth by •al-Shāfi‘ī in *al-Musnad* p. 344. •Abū Yūsuf in *Kitāb al-kharāj*, p. 187. •al-Bayhaqī in *al-Sunan al-kubrā*, 8:34 §15712. •al-Asqalānī in *al-Dirāya fī takhrīj ahādīth al-Hidāya*, 2:263. •al-Zayla‘ī in *Naṣb al-rāya*, 4:336.

Khatṭāb was saying: ‘Flog the son of the noble!’” Anas reported: “By Allah! He flogged him vigorously and we appreciated it (the justice of ‘Umar). He did not stop flogging him until we felt that he must stop. Then ‘Umar said to the Egyptian to put the whip on the head of ‘Amr b. al-Āṣ. He said: ‘O Commander of the faithful! I took revenge from his son who whipped me.’ ‘Umar said to ‘Amr b. al-Āṣ: ‘Since when have you regarded people as your slaves, while their mothers gave birth to them as free men?’ ‘Amr b. al-Āṣ said: ‘O Commander of the faithful! I was unaware of this incident and this man did not come to me.’”¹

Cited by al-Hindī.

¹ Set forth by •Ibn ‘Abd al- akam in *Futūḥ Miṣr wa akhbaru-hā*, p. 114-115. •al-Hindī in *Kanz al-‘ummāl*, 12:294 §36010.